

III. Remarks

Claims 14-33 are pending of which claims 14 and 28 are independent. Claims 1-13 are cancelled. Claims 14-33 are new. The subject matter previously claimed in claims 1-13 has been generally incorporated into new claims 14-25, with the exception of claim 11. The features of claim 11 have been incorporated as limitations in new independent claim 28. Reconsideration of presently pending claims 14-33 is respectfully requested in light of the above amendments and the following remarks.

Priority

The Examiner requested a certified copy of application number FR0211189 as required by 35 U.S.C. 119(b). Applicant is submitting the requested certified copy with this response.

Information Disclosure Statement

The Examiner indicated that the information disclosure statement (IDS) of March 9, 2005 failed to comply with 37 CFR 1.98(a)(2), which requires, "[a] legible copy of ... [e]ach foreign patent". 37 CFR 1.98(b)(3)(ii) further requires copies of English-language translations of foreign-language patents if the translation is readily available. It is believed that the Examiner intended to cite 1.98(b)(3)(ii) requiring an English version, as legible copies of the cited documents were submitted as part of the IDS on March 9 and can be found in the PAIR system. To that end, an updated information disclosure statement is included with this response listing what Applicant believes to be an English-language version of each of foreign patents FR2799640, FR2811540, and FR2818530, along with an English-language abstract of foreign patent FR2722088.

Oath/Declaration

The declaration was deemed defective. With this response, Applicant is submitting an executed declaration that identifies the filed application by title and inventor name, along with a coverletter identifying the application for which it is intended by the application number and filing date, in accordance with MPEP §602.VI.

Objection to Claims 4-13

The Examiner objected to claims 4-13 under 37 CFR 1.75(c) for improper multiple dependent claim usage. In a telephone conversation with the Examiner on December 7, 2006, the undersigned pointed out that the claims examined were those of the English translation instead of those submitted with the substitute specification. Those submitted in the substitute specification are not in multiple dependent form. By this paper, Applicant has canceled pending claims 4-13 and replaced them with claims 17-25 (with the exception of claim 11, which is replaced by independent claim 28).

Objection to Claim 11

The Examiner's objection to claim 11 is acknowledged. As explained above, it appears that claim 11 of the translation was examined instead of the pending claims. Nevertheless, by this paper, claim 11 has been cancelled. New independent claim 28 generally represents the subject matter of cancelled claim 11.

Claim Rejections under 35 USC §112

The Examiner rejected claims 1-3 for various §112 reasons. Applicant has cancelled claims 1-3; however, claims 1-3 are now generally represented by claims 14-16 respectively. These claims comply with the requirements of §112. Therefore, Applicant respectfully requests that the Examiner withdraw this rejection.

Claim Rejections under 35 USC § 102(b)

Claims 1 and 2 were rejected under 35 U.S.C. §102(b) as being anticipated by Le Couedic (WO 02/03882A2). As previously described, claims 1 and 2 have been cancelled and are generally represented by new claims 14 and 15 respectively. As set forth at MPEP §2131, it is well-established that:

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.

New claim 14 requires:

an interspinous wedge configured to be inserted between the spinous processes of two vertebrae, wherein the wedge includes at least one elastically deformable zone;

two compressive lateral elements disposed on either side of the wedge in a longitudinal direction, wherein the compressive lateral elements are deformable between releasing positions and compressive positions; and

two lateral transmission elements disposed between the compressive lateral elements and the wedge, and configured to selectively press against the wedge in the transverse direction near the elastically deformable zone.

In contrast, Le Couedic discloses ties which wrap around the spinous processes to lock the transmission elements into place by applying tension. Le Couedic, US 2004/0106995 A1, paragraph 3, lines 4-7. Therefore, Le Couedic does not disclose lateral elements which are compressive. Neither does Le Couedic disclose "*lateral elements . . . disposed . . . in a longitudinal direction*," as required by claim 14.

(Emphasis added). In the Office Action, referring to Le Couedic, the straps designated as "Compression Element" are not lateral and not disposed in a longitudinal direction. Therefore, claim 14 should be allowable over Le Couedic.

Dependent Claims 15-27 and 29-33

Dependent claims 15-27 and 29-33 depend from and further limit independent claims 14 and 28 and therefore should be patentable over the prior art for at least described above.

IV. Conclusion

An early formal notice of allowance of claims 14-33 is requested. The Examiner is invited to telephone the undersigned at 972-739-6969 if any assistance would be helpful. Deposit account number 08-1394 can be used for any over payments or under payments.

Respectfully submitted,



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This paper and fee are being deposited with the U.S. Postal Service Express Mail Post Office to Addressee service under 37 CFR §1.10 on the date indicated above and is addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450

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